IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.313 OF 1997

1.Ravindra s/o.Raghunath Jagtap)
Age 25 years,Occ. Service, Dist.Nasik)
2.Hausabai w/o.Raghunath Jagtap)
Age 45 years, Occ. Household,)
3.Raghunath s/o.Nivrutti Jagtap,)
Age 52 years, Occ. Service,)
All resident of Uttam Nagar, Nasik,)
(Appellant NO.1 presently in Nasik)
Central Prison))..APPELLANTS
) (ORI.ACCUSED
)NOS.1,2 AND 4)

Versus

The State of Maharashtra)..RESPONDENT

Mr. D.S. Sawant, for the Appellants.
Mr.D.R. More, A.P.P. for State.

CORAM : V.G.PALSHIKAR & V.C. DAGA,JJ.
DATED : 10TH JUNE, 2005

JUDGMENT: (PER V.C. DAGA, J.)

. This Appeal is directed against the convictions and sentences awarded on 19th May, 1997 by the Additional Sessions Judge, Nasik in Sessions Case No.31 of 1997. The present Appellants, who were Accused Nos. 1, 2 and 4 in that case were convicted under Section 235 Cr.P.C. of the offence punishable under Section 498-A read with Section 34 of I.P.C. and each of them is sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/-. In default of payment of fine the defaulting accused were to undergo further R.I. for two months. The Accused Ravindra Jagtap, the Appellant No.1 herein was further convicted of the offence under Section 302 of I.P.C. and sentenced to

imprisonment for life and to pay a fine of Rs.3000/-. In default of payment of fine the Accused Ravindra Jagtap was ordered to undergo further R.I. for one year. The accused No.3 Kantabai came to be discharged.

2. The facts as they transpired are as follows:-

. The deceased Shobha was the sister of the complainant, Shri Shivaji Santu Gaikwad. The deceased Shobha got married with Accused No.1 Ravindra Raghunath Jagtap on 26th May, 1995. The Appellant Nos. 2 and 4 are the parents of accused No.1, whereas Accused No.3 is the daughter of accused Nos. 2 and 4. The complainant reported that about a fortnight after the marriage, the accused persons started harassing and treating Shobha with cruelty saying that she was black complexioned and that the amount of dowry given in marriage was very meagre. She used to be beaten up and tortured. The deceased Shobha was, however, consoled and comforted by her parents. She was sent back to her matrimonial home.

3. The prosecution further alleged that the husband and parents in law of deceased Shobha on 18th July, 1995 have again beaten and drove her out of her matrimonial home. She thus was required to take shelter in the house of her cousin Ashok. The complainant after due enquiry took her to the Police Station and lodged the complaint against the accused persons. The Police summoned them and reconciliation was

brought between the parties.

4. On 14th September, 1995 once again the husband and the parents in law had beaten her because of which she was again required to lodge complaint against them with the Police. The Police Authorities intervened and tried to settle the matter amicably. Shobha again started cohabiting with her husband.

5. It is the case of the prosecution that the deceased Shobha had addressed a letter to her parents some time in the month of March, 1996 complaining therein that she was beaten up and she was required by her husband and parents in law to get sum of Rs.10,000/- as her husband desired to purchase a new scooter. It was further alleged that she was stripped of her sari, beaten up and threatened to the extent of saying she would be burnt alive. According to the prosecution the accused persons on 18th October, 1996 again demanded Rs.4,000/- from the complainant for taking cooking gas connection.

6. The complainant on 24th October, 1996 learnt that the deceased suffered burn injuries and was admitted in the hospital. Immediately, the complainant claimed to have rushed to the hospital. The deceased told him that she was assaulted by her parents in law. That her husband had sprinkled kerosene on her person and set her on fire by lighting a match stick. On 24th October, 1996 at about 1.30

p.m. Shobha was declared dead.

7. On the complaint filed by the Complainant, the Police initiated action and after completing investigation arrested and charge sheeted all the accused.

8. All the accused denied the charges levelled against them and claimed to be tried contending that they have been falsely implicated. In defence they alleged that Shobha had a love affair with one Anil Ashok Jadhav. She used to leave her husband's place to meet him. The burn injuries suffered by the deceased were accidental and that at the relevant time the Accused No.1 Ravindra was not at home.

9. The learned Additional Sessions Judge, Nasik, who tried the case by impugned judgment and order dated 19th July, 1997 convicted the Appellant Nos. 1, 2 and 4 as mentioned in the opening part of this judgment.

10. Being aggrieved by the impugned judgment and order dated 19th July, 1997 the Appellants have preferred this Appeal to challenge their conviction.

11. The learned Counsel appearing for the Appellants submitted that the learned trial Judge has failed to take into consideration that there was absolutely no substance in the complaint filed at Exhibit 27 and 28. That the complainant and deceased Shobha neither made any complaint

nor filed any case in the Court for the alleged cruelty practiced on her by her parent-in-laws. That the deceased Shobha or the complainant could not prove ill-treatment as the statements made by them are inadmissible in evidence under Section 32(1) and 35 of the Indian Evidence Act.

12. It is further contended that as per the evidence given by Dr.Gaikwad the deceased was in a serious condition and as such she was not mentally and physically fit to give her dying declaration.That the learned Judge ought not to have relied upon the alleged dying declaration as the reason does not seem to be voluntary. It is further urged that the death of Shobha was accidental. At at the time of accident the Accused No.1 was not near the scene of the offence.

13. The learned Counsel for the Appellants alternatively submits that if at all the dying declaration is to be relied upon in that event dying declaration nowhere implicate the Appellant Nos. 2 and 4 i.e. the parents in law of the deceased. In order to bring home his submission he took us through the dying declaration wherein the deceased has categorically stated that her husband accused-Appellant No.1 has poured kerosene on her persons and set her on fire and ran away from the house to tell his mother that the deceased got herself burnt. The motive for committing this office on the part of the Appellant No.1 is said to be the desire of the husband accused No.1 to have another marriage.

14. Having heard both sides at length, it is not in dispute that the dying declaration, if read as a whole the deceased nowhere implicates the Appellant Nos. 2 and 4 i.e. her parent-in-laws. She does not make any allegations against them. The allegations are in toto are only against the husband accused/Appellant No.1. Having examined the legality of the dying declaration, it has been properly recorded as per the procedure prescribed by the Sub Judicial Magistrate. He was also examined. The dying declaration has been proved by him. It has also been certified by the Medical Officer the mental condition of the deceased. So far as the allegations against the parents in law are concerned, the same are vague. It is not possible to accept the prosecution case on this count No reliable evidence on record is available to prove the case against them under Section 498A read with Section 34 of I.P.C. In the circumstances, we hold that the impugned judgment and order convicting the Appellant Nos. 2 and 4 (accused Nos. 2 and 4) is unsustainable; no case is made out to sustain their conviction as such their conviction under Section 498A read with Section 34 I.P.C. is set aside and both of them are set free, if not required in any other offence. So far as the Applicant No.1, husband is concerned no case is made out to interfere with the conviction of Appellant No.1-Ravindra recorded by the Sessions Court under Section 302 of I.P.C.

In the result the following order:-

O R D E R

. Appeal partly allowed. The conviction and sentence of accused No.1 maintained. The accused Nos. 2 and 4 acquitted.

(V.G. PALSHIKAR, J.)

(V.C. DAGA, J.)